Racism, Railroad Unions, and Labor Regulations

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Until recently, labor historians mostly ignored or whitewashed the role of racism in the American labor movement. Influenced by Marxist interest-group theory that attributes nearly all societal conflict to economic class conflict, these scholars assumed that labor conflicts involved oppressed workers with a common interest on one side and powerful employers or capitalists on the other. If labor unions treated African Americans, Latinos, and Chinese poorly, they did so because of the manipulation of capitalists who sought to divide the working class, not because of white workers' own endogenous racism.

Modern labor historians are less enamored of the cruder forms of Marxism and much more willing to recognize that racism suffused and to some extent even motivated organized labor from the post–Civil War period through at least the late 1930s. However, these labor historians ignore the significant role "progressive" labor laws played in giving racist labor unions the power to exclude African Americans and other minorities. For example, several recent articles and theses have discussed how the American railroad brotherhoods attempted to exclude African Americans from the occupations held by their members (Arnesen 1994, Sundstrom 1990, Taillon 1997). These works fail to note that labor laws granting those unions monopoly power were crucial to the ultimate exclusion of African Americans from many railroad occupations.

Origins of the Conflicts between African Americans and Railroad Unions

From the late nineteenth century through the New Deal era, tens of thousands of African Americans found relatively remunerative work on American railroads. Most of

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those workers were unskilled laborers, but African Americans were also well represented in semiskilled positions, such as fireman and trainman, particularly in the South.

The opportunities semiskilled African American workers found in the railroad industry were perpetually endangered by the racist policies of the railroad unions. The so-called operating unions, representing workers in train and engine service, launched collective bargaining in the 1880s and developed into some of the strongest unions in the United States. The shop-crafts unions and other so-called nonoperating unions developed more slowly, but gradually they too gained power.

Almost all of the major railroad unions banned African Americans from membership by constitutional provision. African Americans were also banned from other unions that had large memberships among railroad workers, including the Boilermakers, the International Association of Machinists, and the Blacksmiths. White workers understood that excluding African Americans undermined labor solidarity and made it much more difficult for their unions to negotiate successfully with railroad management. One Texas fireman nevertheless declared that "we would rather be absolute slaves of capital, than to take the negro into our lodges as a [*sic*] equal and brother" (Arnesen 1994, 1629).

The brotherhoods were initially successful in excluding African Americans from jobs in which few African Americans were employed; railroad management did not want to risk racially motivated strikes if no ready reserve of African American workers existed to replace striking whites. For example, because African Americans had never acquired many jobs as conductors or engineers, it was not difficult to exclude them from those jobs (Sundstrom 1990). In the North and West, firemen and brakemen were initially overwhelmingly white. The entrenched white workers insisted on applying a stringent color line, and railroad managers usually capitulated (Harris 1982, 41; Arnesen 1994, 1608).

The trainmen and firemen brotherhoods had far more difficulty excluding African Americans from their crafts in the South, because many African Americans had entered those occupations at a time when the jobs were hot and dirty and therefore considered "Negro work." As technological improvements made those jobs less unpleasant, they became attractive stepping stones to conductor and engineer positions, and therefore increasingly appealed to white workers (Spero and Harris 1931, 284).

Despite union pressure, railroads had incentives to hire African American workers. African American firemen and trainmen earned about 10 to 20 percent less than whites (although railroad representatives insisted that this difference was due to productivity differences). Moreover, white engineers preferred to work with African American firemen, who were more willing than whites to serve as the engineers' valets; the engineers also wanted new engineering jobs to be reserved for unemployed engineers, not for white firemen seeking promotion (Arnesen 1994, 1621–22; Sundstrom 1990, 429).

Beginning in the 1890s, the Brotherhood of Railroad Firemen along with the Brotherhood of Railway Trainmen launched public, organized efforts to exclude African Americans from their occupations nationwide (Marshall 1968, 135–36). One way the unions attempted to achieve their exclusionary goal was by engaging in strikes for a whites-only hiring policy. Such strikes often involved violence against African American railroad workers (Hill 1977, 15; Matthews 1974, 617–21). In general, those "race strikes" were unsuccessful (Arnesen 1994, 1631; Matthews 1974).

Early Discriminatory Railroad Legislation

When the unions found they could not exclude African Americans through the collective-bargaining process, they began to consider how the government could aid them. *Full-crew laws* proved useful. These laws provided that a train crew must consist of an engineer, a fireman, a conductor, a brakeman, and a flagman. Full-crew laws were ostensibly passed for safety reasons, but they enjoyed much of their popularity because they served the interests of the railroad unions. Not only did full-crew laws force railroads to hire unnecessary workers, but railroad unions used them to ensure that the railroads hire union members.

In both the North and the South, full-crew laws led to discrimination against African Americans who had gradually acquired positions as brakemen while remaining officially classified as porters. At the behest of the trainmen's union, state railroad officials decided that the many African American porters who did brakemen's work were not brakemen for the purposes of the statutes. The porters therefore had to be replaced by white brakemen—generally union members—in order to comply with the law (Northrup 1971, 52).

Despite these efforts and others by railroad unions to exclude African Americans, approximately 104,000 African Americans worked in the railroad industry in 1910. Although most worked as unskilled laborers or porters, African Americans also held approximately one-third of southern railroad fireman and brakeman jobs (Sundstrom 1990, 427). Approximately 5,000 African Americans were employed as firemen, and about the same number worked as brakemen (Greene and Woodson 1930, 102–3). A substantial number of African Americans worked as switchmen. These jobs were among the highest-paid positions available to African Americans in the South. Overall, no fundamental change occurred in the relatively favorable position of African American workers in the railroad industry until World War I brought about massive federal intervention in the railroad labor market.

World War I and Federal Intervention in the Railroad Labor Market

During World War I, labor shortages induced skilled African Americans to leave the southern railroads for more lucrative employment in the North. In the past, the pay

differential between whites and African Americans had allowed African Americans to compete successfully with exclusionary white unions for employment, but now that the wartime cessation of immigration had opened up new employment opportunities in northern industry, African American railroad workers sought greener pastures. In response, the federal government, which had taken over the railroads during the war, ordered that African American workers be paid the same wages as whites for fireman, switchman, and trainman jobs.

Immediately after the war ended, railroad unions renewed their efforts to force African Americans out of the industry. They were aided in that effort both by the fact that government control of the industry had greatly increased unionization and union power and by the equal-pay order, which in the postwar period reduced the railroads' incentive to employ African Americans.

The federal government also intervened directly in the labor market to the detriment of African American workers at the behest of unions. For example, labor unions agitated against the employment of African American workers on a northern railroad line where they had not been employed previously, threatening a walkout and strike. In response, the director of operations for the U.S. Railroad Administration issued a directive instructing regional managers that African American "firemen, hostlers, switchmen, brakemen, etc." should not be employed "beyond the practice heretofore existing," nor should they be employed on "any line or in any service upon any line or in any service where they have not heretofore been employed, or to take the places of white men" (Finney 1967, 185). The directive was rescinded after protests from the National Association for the Advancement of Colored People and the National Urban League, but the Railroad Administration remained hostile to African Americans (Finney 1967, 189–90).

Basking in its newfound power, the Brotherhood of Railway Trainmen took matters into its own hands and engaged in a series of racially motivated strikes. When those strikes failed, the white trainmen turned to terrorism, killing several African American trainmen, and kidnapping, beating, and threatening others (Spero and Harris 1931, 296–98). Finally, in order to pacify the trainmen's union, which threatened to disrupt all of the southern lines, the Railroad Administration agreed in 1919 to new regulations benefiting white trainmen at the expense of African Americans. One rule provided that "Negroes are not to be used as conductors, flagmen, baggagemen, or yard conductors" (Spero and Harris 1931, 292). A federal railroad official acknowledged that union blackmail had worked. He told a delegation of African American protestors that sacrificing the interests of African American workers was necessary because "it was better to inconvenience a few men than tie up the entire South for an indefinite length of time" (Spero and Harris 1931, 299–300).

Government domination of the railroads, including federally imposed labor rules, ended soon after the war. Although federal control had solidified the power of

operating craft unions, African Americans managed to hold their own in railroad employment. Approximately 136,000 African Americans still worked in the railroad industry in 1924, many of them in relatively high-paying positions. Although they still could not get jobs as conductors and engineers, as of 1920 they constituted 27 percent of the firemen, 27 percent of the brakemen, and 12 percent of the switchmen in the southern states (Spero and Harris 1931, 284). African American workers formed their own unions, such as the Association of Colored Railway Trainmen, which spent much of their energy trying to defend their members from the machinations of whites-only unions (Grossman 1989, 214–15).

The Labor Injunction: Anathema to Unions, a Blessing for African Americans

Several hundred thousand railroad jobs were eliminated as the railroads mechanized in the early 1920s, increasing the competition for the remaining jobs. The unions responded by intensifying their campaign against African American workers, but they had limited success. Unskilled African American workers suffered disproportionately from mechanization, but the employment situation had stabilized by 1922 (Northrup 1971, 50–51).

For the next several years, railroad unions, particularly the nonoperating unions, weakened dramatically because of the loss of the federal support they had received in the late 1910s, the general decline of organized labor during the 1920s, and the increasingly aggressive use of injunctions issued by federal judges against strikes. Injunctions were used more widely against railroad unions than any other segment of organized labor (Forbath 1989, 1152). African Americans took advantage of the weakening of the unions. During the 1920s, after having served as strikebreakers against unions, African Americans began to enter many of the nonoperating or shop-craft skilled and semiskilled occupations in the railroad industry, such as blacksmith, electrician, carman, and machinist. By the end of the decade, they had doubled their share of jobs in the railroad shops, with particularly large gains in skilled positions (Spero and Harris 1931, 287–90; Northrup 1971, 78–79; Risher 1971, 1).

Courts often issued injunctions to enforce "yellow dog" contracts, in which employees agreed not to join a union. Because the workers had agreed not to join a union, their participation in union-organized strikes could be enjoined as a violation of their contracts. The courts also enjoined labor unions from attempting to organize workers covered by such contracts because such activity amounted to unlawful inducement of breach of contract. The combination of yellow dog contracts and labor injunctions—anathema to organized labor and its sympathizers—played a key role in helping to maintain African American employment on the railroads.

The Railway Labor Act and the Downfall of African American Railroad Workers

Despite setbacks in the early 1920s, several major discriminatory railroad unions, particularly the operating unions, retained some of the monopoly power granted them by federal control over the railroads during and after World War I. The great blow to African American railroad labor was the Railway Labor Act of 1926 and, even more significantly, the 1934 amendments to that act.

The Railway Labor Act guaranteed the right of workers to choose their bargaining representatives. In effect, it granted power to the government to force employers to negotiate with certified union representatives. White unionists understood that the act would help them tremendously in their quest to exclude African American workers from the railroads. As Richard Epstein notes, the act "did not transform racial attitudes, but it did change the balance of power" by giving whites "control over the choices of both African American workers and the railroads" (1992, 122). It gave unions the power to negotiate agreements with several railroads that substantially limited the number of jobs available to African Americans. T. Arnold Hill of the National Urban League concluded in 1934, "During recent years considerable new Federal legislation has been enacted to improve the railroads and to promote the welfare of employees working on them. Concurrently with this legislation, the condition of Negroes engaged in train and yard service has grown steadily worse" (1934, 347)

The negative effects of the Railway Labor Act on African American workers were exacerbated in 1934, when Congress amended it to provide that "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the class or craft." In other words, the union chosen by the majority of workers in a particular category defined by government regulations would now have the exclusive right to negotiate on behalf of all workers in that category.

Moreover, the 1934 amendments outlawed yellow dog contracts and banned the formation of company-financed unions, which, at least as compared to railroad unions organized by white workers, had treated African American workers fairly (Williams 1981, 31).

Along with the Norris-LaGuardia Act of 1932, which banned most federal court injunctions in labor disputes, and state "little Norris-LaGuardias," which banned such injunctions in state courts, the 1934 amendments gave tremendous power to exclusionary railroad unions. These unions immediately tried to take advantage of the amendments "to gain a favored position for white workers" (Note 1953, 517). The National Mediation Board (NMB) and the National Railroad Adjustment Board (NRAB), both established by the 1934 amendments, abetted the unions' discriminatory actions.

The NRAB had jurisdiction over disputes arising out of the interpretation of collective-bargaining agreements in the railroad industry. The board was composed of

thirty-six members, half chosen by the unions and half by the railroads. National unions were eligible to participate in selecting the union representatives, but African American unions were not permitted to participate (Northrup 1971, 66).

Dominance of the NRAB by the railroad brotherhoods led the board to promulgate rules that benefited white workers at the expense of African Americans. For example, in 1942 the First Division of the NRAB ruled that railroads could not use porter-brakemen as brakemen (*Brotherhood of Railroad Trainmen v. A.T.* 1942). In practice, that decision required the railroads to replace African American porters who served as porter-brakemen with white brakemen.

Meanwhile, the NMB determined, on the basis of a poll of workers, which union would act as sole bargaining agent of any class or craft. NMB policy made collective bargaining "a mockery for the black minority on the roads" (Northrup 1971, 55). The election process almost always led to the designation of the discriminatory white firemen's and trainmen's unions as the sole bargaining agents for African Americans in those jobs. Even on the rare occasions when most of the voters in a railroad-union election were African American, white unions managed to win the elections through fraud; African American workers protested to the NMB to no avail (Northrup 1971, 55). The lack of redress logically resulted from the conviction of many members of the NMB that the certification process should be limited to whites (Northrup 1971, 55–60).

Because African Americans were not accepted for membership in most railroad union locals and at best were relegated to a subordinate status, they attempted to form their own unions (Hill 1937, 56; Northrup 1971, 66). The NMB frustrated such attempts by ruling that those alternative unions could not represent African American employees because the official unions already represented them. The NMB thus bestowed de facto monopoly representation powers on white labor unions that refused to extend equal membership rights to African Americans.

African Americans often were not able to get copies of the contracts in force on their railroads, though the contracts were routinely distributed to white workers. Although the NMB was supposed to keep a copy of all union contracts, it was not eager to help African Americans who believed that a contract was being violated to their detriment ("Elimination of Negro Firemen" 1944, 35). The firemen's brotherhood refused to handle grievances filed by African Americans if the complaint conflicted with the perceived interests of white firemen. Such conduct was not surprising, given that in 1937 the union had reaffirmed its intent to eliminate African American firemen from the profession (Brotherhood of Locomotive Firemen 1937, 584–85).

The firemen's union negotiated a series of discriminatory agreements with the railroads that severely reduced the employment of African American firemen in the late 1930s and early 1940s. By 1940, the number of African American firemen and brakemen had declined by almost two-thirds from the 1920 level (Houston 1949, 269). That "progress" did not satisfy the brotherhoods, however; their goal remained the elimination of African American competition nationwide. For example, in 1940,

the firemen's brotherhood demanded that all future firemen hired by the southeastern carriers be "promotable," meaning white (*Brotherhood of Locomotive Firemen v. Tunstall* 1947).

When some carriers resisted, the brotherhood called in the NMB. With the NMB's encouragement, the firemen's union in 1941 signed a contract with the southeastern carriers that contained a clause stipulating that the carriers would hire only "promotables" and would reduce the number of nonpromotables on each line to 50 percent. The agreement was eventually amended to state that "nonpromotable" meant "colored." Similar agreements were devised by the brakemen's union (Henderson 1976, 181).

Sometimes, unions forced employers to go beyond the letter of the contracts and engage in wholesale displacement of African American railroad workers already employed. The period was also marked by many secret agreements designed to undermine African American employment. In one case, the firemen's union agreed with the Gulf, Mobile, and Ohio Railroad to forgo higher wages for its members in return for more jobs on new stokerized engines at the expense of senior African American firemen (Henderson 1976, 178).

The NMB approved the discriminatory agreements made by the unions and the railroads. Malcolm Ross, a director of the Fair Employment Practice Committee during World War II, noted that, in doing so, the board "was no more legally responsible for the antiracial act than an Elkton Maryland marrying parson is for joining in holy wedlock an overstimulated Princeton sophomore and a blonde he has just picked up" (1948, 130). The NMB's job was to accept any agreement the designated union negotiated with the railroads.

The Long-Term Effects of the Railway Labor Act: Caste in *Steele*

In 1944, in *Steele v. Louisville & Nashville Railroad*, the U.S. Supreme Court unanimously held that railroad unions, having been granted monopolies by the Railway Labor Act, must represent all workers fairly, including African Americans. One contemporary authority celebrated the *Steele* decision as "Dred Scott in reverse" (Ross 1948, 127). In fact, however, the ruling (and its extension a few years later by the Supreme Court to prohibit unions from attempting to dislodge African American workers in a different bargaining class [*Howard v. St. Louis* 1953]) did not effectively reduce discrimination in railroad employment. *Steele* did not require unions to admit African American members, and it did nothing to reduce the monopoly powers the Railway Labor Act conferred on unions. Most railroad unions, meanwhile, remained recalcitrantly racist. Although *Steele* held that the railroad unions had a duty of fair representation, "many opportunities remain[ed] for ostensibly neutral rules to impose disproportionate losses on black workers" in such a manner that the possibility of redress through the courts was remote (Epstein 1992, 124).

Moreover, the promise *Steele* did hold for African Americans was not realized because the relevant government agencies did not vigorously enforce it, and resources for private parties to bring cases were lacking (Risher 1971, 149; Williams 1981, 31). Indeed, the discriminatory agreement that led to the *Steele* case remained in force until 1951. By the time *Steele* began to give African American railroad workers some leverage against discrimination in the 1950s, the bulk of jobs held by African Americans on the railroads had been lost (Hill 1982, 20). For example, the percentage of African American firemen in the South declined to only 7 percent in 1960 (Northrup 1971, 53). By the time the railroad unions revoked their color bars in the 1960s, overall railroad employment had declined dramatically, and few railroads were doing much new hiring (Northrup 1971, xc).

To be sure, not all African American railroad workers were harmed by the Railway Labor Act. Some deft political maneuvering in 1934 by A. Philip Randolph of the Brotherhood of Sleeping Car Porters assured that, despite the indifference or hostility of the other railway unions, the almost entirely African American porters' union was recognized as the "duly authorized representative of the sleeping car porters" (Berman 1935, 217). That recognition rescued the brotherhood from near extinction, and it guaranteed that members of the brotherhood received the advantages union members gained from the Railway Labor Act.

Overall, however, as labor economist Herbert Northrup concluded in 1944, "in no other industry has collective bargaining had such disastrous results for Negroes" (1971, 93–94). In a 1971 introduction to a reprint of his earlier work, *Organized Labor and the Negro*, Northrup added that if equal opportunity finally was to come to railroad employment, it would arrive at least thirty years too late (xc).

It should be stressed that ubiquitous collective bargaining in the railroad industry did not happen spontaneously. The federal government encouraged it—indeed, commanded it. More precisely, then, Northrup could have concluded that in no other industry did government intervention in the labor market have such disastrous consequences for African Americans.

References

Arnesen, Eric. 1994. "Like Banquo's Ghost, It Will Not Down": The Race Question and the American Railroad Brotherhoods, 1880–1920. *American Historical Review* 99 (December): 1601–33.

Berman, Edward. 1935. The Pullman Porters Win. *Nation* 141 (August 21): 217–18.

Brotherhood of Locomotive Firemen and Enginemen. 1937. Proceedings of the Thirty-third Convention.

Brotherhood of Locomotive Firemen v. Tunstall. 1947. 163 F.2d 289 (4th Cir).

Brotherhood of Railroad Trainmen v. A.T. & Santa Fe Railway. 1942. N.R.A.B. Award No. 6640 (1st Div).

The Elimination of Negro Firemen on American Railways: A Study of the Evidence Adduced at the Hearing before the President's Committee on Fair Employment Practices. 1944. *Lawyers Guild Review* 4 (March–April): 32–37.

Epstein, Richard A. 1992. *Forbidden Grounds: The Case Against Employment Discrimination Laws.* Cambridge, Mass.: Harvard University Press.

Finney, John D., Jr. 1967. A Study of Negro Labor during and after World War I. Ph.D. dissertation, Georgetown University.

Forbath, William E. 1989. The Shaping of the American Labor Movement. *Harvard Law Review* 102: 1109–256.

Greene, Lorenzo, and Carter G. Woodson. [1930] 1970. *The Negro Wage Earner.* New York: AMS.

Grossman, James R. 1989. *Land of Hope: Chicago, Black Southerners, and the Great Migration.* Chicago: University of Chicago Press.

Harris, William H. 1982. *The Harder We Run: Black Workers Since the Civil War.* New York: Oxford University Press.

Henderson, Alexa B. 1976. FEPC and the Southern Railway Case: An Investigation into the Discriminatory Practices of Railroads During World War II. *Journal of Negro History* 61: 173–87.

Hill, Herbert. 1977. *Black Labor and the American Legal System.* Washington, D.C.: Bureau of National Affairs.

———. 1982. The AFL-CIO and the Black Worker: Twenty-Five Years after the Merger. *Journal of Intergroup Relations* 10: 5–20.

Hill, T. Arnold. 1934. Railway Employees Rally to Save Their Jobs. *Opportunity* 12: 346–47.

———. 1937. *The Negro and Economic Reconstruction.* Washington, D.C.: Associates in Negro Folk Education.

Houston, Charles H. 1949. Foul Employment Practice on the Rails. *The Crisis* 56 (October): 269–70.

Howard v. St. Louis–Santa Fe Railway. 1953. 343 U.S. 774.

Marshall, Ray. 1968. The Negro in Southern Unions. In *The Negro and the American Labor Movement,* edited by Julius Jacobson. Garden City, N.Y.: Anchor.

Matthews, John Michael. 1974. The Georgia "Race Strike" of 1909. *Journal of Southern History* 40 (November): 613–30.

Northrup, Herbert. [1944] 1971. *Organized Labor and the Negro.* New York: Kraus Reprint.

Note. 1953. Judicial Regulation of the Railway Brotherhoods' Discriminatory Practices. *Wisconsin Law Review* 1953: 516–36.

Railway Labor Act of 1934, ch. 691, 48 Stat. 1185.

Risher, Howard W., Jr. 1971. *The Negro in the Railroad Industry.* Philadelphia: University of Pennsylvania Press.

Ross, Malcolm. 1948. *All Manner of Men.* New York: Greenwood.

Scott, Emmett J. [1920] 1969. *Negro Migration During the War.* New York: Arno.

Spero, Sterling, and Abram Harris. 1931. *The Black Worker.* New York: Columbia University Press.

Sundstrom, William A. 1990. Half a Career: Discrimination and Railroad Internal Labor Markets. *Industrial Relations* 29 (fall):423–40.

Taillon, Paul Michel. 1997. Culture, Politics, and the Making of the Railroad Brotherhoods, 1863–1916. Ph.D. dissertation, University of Wisconsin.

Williams, Walter E. 1981. Freedom to Contract: Blacks and Labor Organizations. *Government-Union Review* 2 (3): 28–44.

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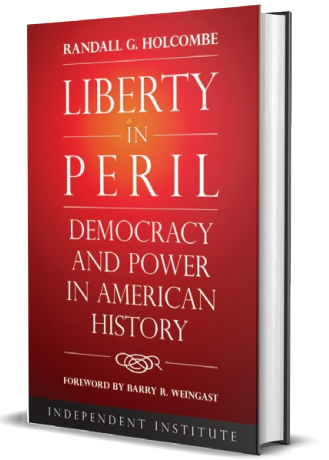

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